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**ORIGINAL
FILE**

Transcript of Proceedings

BEFORE THE

Federal Communications Commission

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In the Matter of: :

Docket Number: 92-33

UNION PARK, FLORIDA :

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1 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

2 - - - - - X

3 In the Matter of: : MM Docket No. 92-33

4 UNION PARK, FLORIDA : Volume 2

5 - - - - - X

6 The above-entitled matter came on for
7 prehearing conference pursuant to Notice before Edward
8 J. Kuhlmann, Administrative Law Judge, at 2000 L
9 Street, Northwest, Hearing Room Four, Washington, D.C.,
10 on Tuesday, July 21, 1992, at 10:00 a.m.

11 APPEARANCES:

12 On Behalf of Southwest Florida Community Radio,

13 Inc.:

14 A. WRAY FITCH, Esquire

15 Gammon and Grange

16 8280 Greensboro Drive

17 Seventh Floor

18 McLean, Virginia 22102

19 On Behalf of Hispanic Broadcast System, Inc.:

20 JAMES L. OYSTER, Esquire

21 Law Offices of James L. Oyster

22 Route 1, Box 203A

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1 APPEARANCES (Continued):

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3 Foundation, Inc.:

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8 Washington, D.C. 20007

9 On Behalf of MIMS Community Radio, Inc.:

10 STEPHEN C. SIMPSON, Esquire
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12 Suite 800
13 Washington, D.C. 20005

14 On Behalf of Federal Communications Commission:

15 JAMES W. SHOOK, Esquire
16 Mass Media Bureau
17 Washington, D.C. 20554

18 On Behalf of Bible Broadcasting Network, Inc.:

19 GARY S. SMITHWICK, Esquire
20 Smithwick & Belendiuk, P.C.
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24

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I N D E X

WITNESS DIRECT CROSS REDIRECT RECROSS
(None.)

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E X H I B I T S

NUMBER	IDENTIFIED	RECEIVED	REJECTED
Joint 1	20	20	—
Central FL Educ Foundation 1 - 10	20	25	—
Bible Broadcastg Network 1 thru 5	27	27	—
Southwest Fla Comm Radio 1 thru 3	28	28	—
Hispanic Broadcast System 1 thru 8	29	34	—
Hispanic Broadcast System 7	29	—	32
Hispanic Broadcast System 8	29	—	34

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P R O C E E D I N G S

(Time Noted: 10:01 a.m.)

JUDGE KUHLMANN: I realize that you stipulated, but I thought that this would be the easiest way to do this, and it will be. It will go more quickly, and then we will be finished. Just let me put them in a pile over here.

And then, I assume you have all brought your copies for the record?

VOICES: Yes, sir.

JUDGE KUHLMANN: For Central Florida Educational Foundation?

MR. DUNNE: Joseph Edward Dunne III of the firm of May & Dunne, Chartered.

JUDGE KUHLMANN: And for Bible Broadcasting Network, Inc.?

MR. SMITHWICK: Gary Smithwick, Your Honor, of Smithwick and Belendiuk.

JUDGE KUHLMANN: And for Southwest Florida Community Radio, Inc.?

MR. FITCH: Wray Fitch, Your Honor, Gammon and Grange.

JUDGE KUHLMANN: Okay. And for MIMS Radio, Inc.?

MR. SIMPSON: Stephen C. Simpson, Your Honor.

1 JUDGE KUHLMANN: And for Hispanic Broadcast
2 System, Inc.?

3 MR. OYSTER: James L. Oyster.

4 JUDGE KUHLMANN: And for the Mass Media?

5 MR. SHOOK: James Shook.

6 MR. SMITHWICK: Your Honor?

7 JUDGE KUHLMANN: Mr. Dunne, are you going to
8 file a reply to your petition to enlarge against MIMS?

9 MR. DUNNE: Yes, sir.

10 JUDGE KUHLMANN: Okay. When are you going to
11 do it?

12 MR. DUNNE: Monday, sir.

13 JUDGE KUHLMANN: Okay. Good enough. Fine.
14 Because, I read the opposition. I assume you have?

15 MR. DUNNE: Yes, sir.

16 JUDGE KUHLMANN: And you know, it was in the
17 contract.

18 MR. DUNNE: We will be replying, Your Honor.

19 JUDGE KUHLMANN: Okay. Good enough, but that
20 looks pretty airtight to me. Not so?

21 MR. DUNNE: We may convince you otherwise.

22 JUDGE KUHLMANN: Oh. Okay. Good enough. I
23 mean, I am not going to say I am easy to convince, but
24 you can convince me.

25 Anyway, and then I will look at the

1 amendment, and the Bureau has already stated that the
2 amendment is okay, so now, while I am on that subject,
3 you are going to use a new tower --

4 MR. SIMPSON: Yes, Your Honor.

5 JUDGE KUHLMANN: -- at the new site? So when
6 will the FAA determine whether that tower is
7 acceptable?

8 MR. SIMPSON: Your Honor, the tower is less
9 than 200 feet, and they should sign off on it within
10 the next week or two.

11 JUDGE KUHLMANN: Okay. That is all I wanted
12 to know.

13 And then, also, do you have to submit a plan
14 for an environmental plan to the Bureau?

15 MR. SHOOK: Your Honor, our technical review
16 covered the environmental --

17 JUDGE KUHLMANN: Oh, it did cover the
18 environmental?

19 MR. SHOOK: It is meant to cover everything,
20 and the only concern that we have is with respect to
21 the FAA. That was specifically --

22 JUDGE KUHLMANN: Okay.

23 MR. SHOOK: -- noted.

24 JUDGE KUHLMANN: Good.

25 MR. SHOOK: Everything else was --

1 JUDGE KUHLMANN: I did not know that.

2 MR. SHOOK: -- okay, though. Yes, sir.

3 JUDGE KUHLMANN: I did not understand that.

4 Good. That is why I raised it, because I wanted to be
5 sure I understood everything. I did not want anything
6 outstanding.

7 And then, I will look at what you have got to
8 say, and I will think about it. Okay? Good enough.

9 All right, then. Is there anything else,
10 now?

11 MR. SMITHWICK: Your Honor, one thing. You
12 asked the question earlier if we had supplied our
13 copies of the record copies to the reporter. I gave an
14 original to the reporter a few moments ago, and in
15 checking, found that I only had one additional copy.
16 My paralegal was supposed to bring other copies. She
17 came in.

18 JUDGE KUHLMANN: Yes. You have to have two.

19 MR. SMITHWICK: I understand. She came in
20 and indicated that she did not have the additional copy
21 she thought she had.

22 I would like to request permission to make
23 another copy, and give to the reporter.

24 MR. SIMPSON: Your Honor, I can give him my
25 copy, and then if he can supply the copy to me

1 subsequent to the --

2 MR. SMITHWICK: Okay. Thank you, Your Honor.

3 MR. DUNNE: Your Honor, I have the same
4 problem. I have only the originals of the joint
5 hearing exhibit, and my exhibits. We had a problem
6 with our copying machine this morning.

7 JUDGE KUHLMANN: Oh. Okay.

8 MR. DUNNE: I apologize.

9 JUDGE KUHLMANN: Well, you will have to
10 supply additional copies to the reporter eventually,
11 because, you know, I think we use one now to put them
12 into the memory machine, and then the other one, we do
13 actually have a docket, where one copy is put, that --
14 Commission.

15 MR. DUNNE: Wray, were you going to
16 volunteer?

17 MR. FITCH: Yes. I was going to volunteer.

18 JUDGE KUHLMANN: Okay. Well, let us just go
19 through the exhibits, and we will start with Mr. Dunne,
20 and we will start with Central Florida Educational
21 Foundation.

22 MR. DUNNE: Your Honor, may I?

23 JUDGE KUHLMANN: Just a second. I have got
24 to find them. Okay. Go ahead.

25 MR. DUNNE: Your Honor, may I go slightly out

1 of turn, and talk first about the joint coverage study?

2 JUDGE KUHLMANN: Surely. Go ahead.

3 MR. DUNNE: The joint coverage study was
4 prepared by agreement of all the parties pursuant to
5 the 307(b) issue, Issue 2. It was exchanged with all
6 parties. It consists of thirteen pages, including a
7 Declaration of Kevin Fisher.

8 JUDGE KUHLMANN: All right. The joint
9 coverage study is received into evidence.

10 (The document referred to
11 above was marked Joint Exhibit
12 No. 1 for identification, and
13 was received into evidence.)

14 JUDGE KUHLMANN: Now, the reporter has two
15 copies of this?

16 MR. DUNNE: She does not, Your Honor. I will
17 hand her this copy, and probably one other.

18 JUDGE KUHLMANN: Okay. Would you give her
19 one copy now, so she can stamp it?

20 MR. SHOOK: Just so that it is clear,
21 Your Honor, we did review it, and we have no objection.

22 JUDGE KUHLMANN: Okay. The joint coverage
23 study is received.

24 Now, Central Florida Educational Foundation?

25 MR. DUNNE: Yes. Central Florida Educational

1 Foundation, Inc., offers 10 exhibits in total,
2 Your Honor.

3 JUDGE KUHLMANN: Okay. And you have at least
4 one copy of that for the reporter?

5 MR. DUNNE: I actually have two copies of it.

6 JUDGE KUHLMANN: Okay. Would you give that
7 to the reporter, please, so she can stamp them as we go
8 along?

9 Just for future reference, the ones that are
10 in folders or spiral bound, or whatever, those should
11 not be given to the reporter. You should just give
12 them copies that, where the exhibits are attached,
13 because they cannot put those in the docket that way,
14 and they will just take them out of there, anyway, and
15 it is just a lot of effort for you and for them.

16 All right. Would you identify the exhibits,
17 and we will mark them received?

18 MR. DUNNE: Okay. These 10 exhibits,
19 Your Honor, are: Exhibit Number 1, Legal
20 Qualifications and Corporate Structure. Exhibit 2,
21 CFEF Educational and Cultural Objectives, and its
22 proposed methods to meet those objectives. Exhibit 3,
23 CFEF Methods of Determining Community Needs. Exhibit
24 4, CFEF Means of Implementing Its Educational and
25 Cultural Objectives. Exhibit Number 5, Past Broadcast

1 Record of CFEF Principals. Exhibit Number 6, CFEF
2 Proposed Program Schedule. Exhibit Number 7,
3 Biographical Data of James S. Hoag. Exhibit Number 8,
4 Biographical Data for Thomas H. Moffitt, Jr. Exhibit
5 Number 9, Auxiliary Power Proposal. And Exhibit Number
6 10, Engineering Statement.

7 (The documents referred to
8 above were marked Central
9 Florida Educational Foundation
10 Exhibit Nos. 1 through 10 for
11 identification.)

12 JUDGE KUHLMANN: I am assuming there is no
13 objection to any of these?

14 MR. SHOOK: Your Honor, with respect to
15 Exhibit 10, we do have a concern.

16 JUDGE KUHLMANN: Okay.

17 MR. SHOOK: The population figures that are
18 noted differ from the population figures that appear in
19 the joint engineering study, recognized there. They
20 appear to be based on two different census studies, and
21 they also appear to cover different areas, but that is
22 a problem that we have in terms of --

23 JUDGE KUHLMANN: Sure.

24 MR. SHOOK: -- using Exhibit 10 when it
25 appears to conflict with the joint engineering study.

1 JUDGE KUHLMANN: What is the purpose of
2 Exhibit 10?

3 MR. DUNNE: Exhibit 10, Your Honor, was to
4 show that CFEF's proposal covers more Hispanics and
5 other minorities than the other applicants, and I
6 suggest for comparison purposes it does that.

7 JUDGE KUHLMANN: But you used different
8 census data? I mean, I do not? Did you compare
9 everyone using the same data? I have not looked at it.

10 MR. DUNNE: Yes, sir. That all applicants
11 were compared using the same data, 1990 census data.

12 JUDGE KUHLMANN: I guess I do not have any
13 trouble with that, for that point.

14 MR. SHOOK: Your Honor, I guess the next,
15 maybe this is not the time to concern ourselves with
16 this, but we were wondering what was the purpose of
17 this submission, as opposed to, we understand the joint
18 engineering study that was supposed to follow it.

19 JUDGE KUHLMANN: No. I do not think it,
20 well, if you think it is not relevant, I probably agree
21 with you.

22 MR. SHOOK: Well, we think it may arguably be
23 relevant under the fourth criteria that we generally
24 use to evaluate 307(b) matters --

25 JUDGE KUHLMANN: Oh. Okay.

1 MR. SHOOK: -- such as the first matters, the
2 first reception service --

3 JUDGE KUHLMANN: Right.

4 MR. SHOOK: -- the second is the reception
5 service --

6 JUDGE KUHLMANN: Right.

7 MR. SHOOK: -- the third is the first
8 transmission service, and then the fourth is other
9 public interest factors.

10 We are assuming that Mr. Dunne is offering
11 this under that --

12 MR. DUNNE: No, sir.

13 JUDGE KUHLMANN: No.

14 MR. SHOOK: -- and if he is not, I do not
15 know what this is for, and --

16 JUDGE KUHLMANN: No. No, no, no.

17 MR. SHOOK: -- we would then have a relevance
18 problem.

19 JUDGE KUHLMANN: No. I think it is probably
20 not relevant, but why do you think it is relevant, Mr.
21 Dunne? What issue does it come under, for example?

22 MR. DUNNE: It comes under Issue Number 3,
23 other factors in the record which indicate a superior
24 educational service.

25 We are not offering it for 307(b) purposes,

1 the 307(b) purposes case, and our view is covered by
2 the joint engineering exhibit.

3 JUDGE KUHLMANN: Okay.

4 MR. SHOOK: In that case, Your Honor, we do
5 not have a problem. We are not going to be involved --

6 JUDGE KUHLMANN: I know you are not.

7 MR. SHOOK: -- in that issue.

8 JUDGE KUHLMANN: Okay, but no one else has
9 any objection to this? Good. Then Exhibits 1 through
10 10 are received.

11 (The documents heretofore
12 marked Central Florida
13 Educational Foundation Exhibit
14 Nos. 1 through 10 for
15 identification were received
16 into evidence.)

17 JUDGE KUHLMANN: Is 307(b) going to decide
18 this case, Mr. Shook?

19 MR. SHOOK: In my opinion, Your Honor, it
20 will.

21 JUDGE KUHLMANN: Oh. Okay.

22 MR. SHOOK: I mean, it will be more fully
23 spelled-out when we submit our --

24 JUDGE KUHLMANN: Yes. No, no, no, no. I
25 just wondered what your view was on that.

1 MR. SHOOK: It is just a preliminary view.

2 JUDGE KUHLMANN: I understand it is
3 preliminary. Okay. Good enough.

4 Next, Bible Broadcasting Network. Mr.
5 Smithwick?

6 MR. SMITHWICK: Yes, Your Honor. Bible
7 Broadcasting Network has five exhibits to offer.

8 JUDGE KUHLMANN: And have you give copies of
9 these to the reporter?

10 MR. SMITHWICK: Your Honor, I have. I have
11 given the reporter the original, executed declarations,
12 and also a second copy.

13 JUDGE KUHLMANN: Okay. Go ahead.

14 MR. SMITHWICK: The five exhibits are:
15 Exhibit Number 1, Time Share. Exhibit Number 2,
16 Corporate Structure, Use of Station to Advance an
17 Educational Program. Exhibit Number 3, Proposed
18 Programs. Exhibit Number 4, Superior Broadcast
19 Service. And Exhibit 5, Auxiliary Power. We request
20 these be identified for the record.

21 JUDGE KUHLMANN: Okay. They are identified
22 and received.

23

24

25

1 (The documents referred to
2 above were marked Bible
3 Broadcasting Network Exhibit
4 Nos. 1 through 5 for
5 identification, and were
6 received into evidence.)

7 MR. SMITHWICK: Thank you, Your Honor.

8 JUDGE KUHLMANN: Southwest Florida Community
9 Radio, Inc?

10 MR. FITCH: Yes, sir. I will, right now,
11 hand the court reporter an original and a copy of our
12 direct case exhibits, and I note, I was just reviewing
13 the cover page of our direct case exhibits, and I
14 apologize. I have got Bombay Public Radio in there in
15 the heading, so, I will delete that, orally.

16 JUDGE KUHLMANN: Okay. Go ahead.

17 MR. FITCH: We have got three exhibits.
18 Exhibit 1 is share time evidence, two pages. Exhibit 2
19 is Proposed Integration of Southwest Station Operations
20 Into the Overall Cultural and Educational Objectives of
21 Southwest. It is 18 pages. And Exhibit 3 consists of
22 other factors demonstrating Southwest will provide
23 superior FM educational broadcast service, and that
24 consists of two pages, that is a two-page exhibit. And
25 I, at this time, would ask that those documents be

1 identified, Your Honor.

2 JUDGE KUHLMANN: Okay. They are identified,
3 Exhibits 1, 2, and 3.

4 (The documents referred to
5 above were marked Southwest
6 Florida Community Radio
7 Exhibit Nos. 1 through 3 for
8 identification.)

9 MR. FITCH: And I would ask that they be
10 accepted into evidence.

11 JUDGE KUHLMANN: They are received into
12 evidence.

13 (The documents heretofore
14 marked Southwest Florida
15 Community Radio Exhibit Nos. 1
16 through 3 for identification
17 were received into evidence.)

18 JUDGE KUHLMANN: MIMS Community Radio, Inc.?

19 MR. SIMPSON: Your Honor, we have --

20 JUDGE KUHLMANN: Okay.

21 MR. SIMPSON: -- no exhibits, other than a
22 307(b) exhibit.

23 JUDGE KUHLMANN: All right. Hispanic
24 Broadcast System?

25 MR. OYSTER: Yes, Your Honor. The exhibits

1 to be identified are: Exhibit 1, Description --

2 JUDGE KUHLMANN: Have you give copies to the
3 reporter?

4 MR. OYSTER: I have previously handed an
5 original and one copy to the reporter.

6 The exhibits are: Exhibit 1, Description of
7 the Applicant. Exhibit 2, Hispanic's Cultural and
8 Educational Objectives. Exhibit 3, How the Proposed
9 Operation of the Station Will Be Integrated Into the
10 Overall Cultural and Educational Objectives of the
11 Service Area. Exhibit 4, How the Proposed Station
12 Operations Will Meet the Needs of the Community.
13 Exhibit 5, Hispanic's Ability to Effectuate Its Plans.
14 Exhibit 6, Whether a Share Time Arrangement Between the
15 Applicants Would Result in the Most Effective Use of
16 the Channel. Exhibit 7, 307(b) Analysis. And Exhibit
17 8, Channel 6 Site.

18 (The documents referred to
19 above were marked Hispanic
20 Broadcast System Exhibit Nos.
21 1 through 8 for
22 identification.)

23 JUDGE KUHLMANN: Do you have any objections
24 to any of these, Mr. Shook?

25 MR. SHOOK: Your Honor, we have got problems

1 with Hispanic Exhibits 7 and 8.

2 JUDGE KUHLMANN: I thought you might.

3 Okay. What are your objections?

4 MR. SHOOK: Well, Your Honor, we were under
5 the impression that the 307(b) analysis was completely
6 covered in the joint engineering exhibit, and again --

7 JUDGE KUHLMANN: Okay. Well, let us ask, and
8 find out.

9 Why are you submitting this, when I too
10 thought that the 307(b) analysis that was being
11 submitted as evidence in the hearing was in the joint
12 exhibit?

13 MR. OYSTER: Your Honor, we set forth in our
14 outline in the proceeding that we would be offering --

15 JUDGE KUHLMANN: No, but everyone agreed that
16 you were going to do a joint 307(b) exhibit.

17 MR. OYSTER: On the engineering.

18 JUDGE KUHLMANN: Well, you can provide your
19 own analysis in the findings, if you want, but an
20 exhibit means that you are submitting additional
21 evidence beyond the joint exhibit.

22 MR. OYSTER: Yes. Your Honor, we do believe
23 that it is relevant.

24 JUDGE KUHLMANN: Well, it may be a correct
25 analysis, I do not know, but you cannot submit

1 additional evidence if you are part of the joint
2 exhibit on the 307(b) issue.

3 I mean, I asked everyone. I said, if you go
4 back and look at the transcript of the original
5 prehearing, I said that, if you decided to go along,
6 that you had to go along completely.

7 MR. OYSTER: Your Honor, I did not understand
8 your ruling.

9 JUDGE KUHLMANN: Yes. No.

10 MR. OYSTER: I understood that it applied to
11 the engineering factors.

12 JUDGE KUHLMANN: Well, if there were other
13 factors, they too should have been put into the joint
14 exhibit.

15 MR. OYSTER: Well, I did not understand that,
16 Your Honor.

17 JUDGE KUHLMANN: Otherwise it is not a joint
18 exhibit, it seems to me, on that issue.

19 MR. OYSTER: Well, it is joint with respect
20 to the engineering analysis. That is what I understood
21 it to be.

22 JUDGE KUHLMANN: Did anyone else have another
23 understanding other than I have stated?

24 MR. SHOOK: Your Honor, we had thought that,
25 with respect to 307(b), as I said, those four factors

1 that I had mentioned before, if they were going to be
2 considered, that they would be considered in the joint
3 exhibit.

4 JUDGE KUHLMANN: Yes. I did, too. I read
5 the joint exhibit, to see what you did do, and it
6 seemed to me that it had to be done that way.

7 I am going to reject Exhibit Number 7.

8 (The document heretofore
9 marked Hispanic Broadcast
10 System Exhibit No. 7 for
11 identification was rejected
12 from evidence.)

13 MR. OYSTER: Your Honor?

14 JUDGE KUHLMANN: I am sorry?

15 MR. OYSTER: I am sorry. I was going to make
16 an additional statement.

17 JUDGE KUHLMANN: Okay. Go ahead.

18 MR. OYSTER: You have already ruled, so I
19 will --

20 JUDGE KUHLMANN: All right.

21 MR. OYSTER: I guess there is no point.

22 JUDGE KUHLMANN: It just seemed to me that it
23 had to come in jointly. Otherwise, it seemed to me the
24 Bureau might have called witnesses and things of that
25 sort. I think we had to assume that the joint exhibit

1 was going to be the exhibit.

2 All right. And the Channel 6 site?

3 MR. SHOOK: Yes, Your Honor. As I mentioned,
4 we also have a problem with this Hispanic Exhibit 8.

5 It appears to us that this is almost in the
6 nature of a motion to enlarge the issues, in terms of
7 whether, I guess it is Central Florida. Let me make
8 sure I have got this right.

9 Actually, I am not entirely certain at this
10 point --

11 JUDGE KUHLMANN: What is the purpose of it?

12 MR. SHOOK: -- who this is meant for.

13 JUDGE KUHLMANN: What is the purpose of this
14 exhibit, Channel 6 Site?

15 MR. OYSTER: Your Honor, this exhibit is to
16 demonstrate that the technical proposal upon which
17 Central relies is unsuitable for the purpose indicated.
18 In other words, they are proposing to put an additional
19 antenna on the Channel 6 tower, without diplexing, and
20 Channel 6 has stated that it will not permit this.

21 JUDGE KUHLMANN: Then why did you not
22 petition to enlarge?

23 MR. OYSTER: That is a good question.

24 JUDGE KUHLMANN: It is an excellent question.

25 MR. OYSTER: And perhaps we will.

1 JUDGE KUHLMANN: Well then, you are going to
2 have to, because I am not going to take this exhibit.
3 I mean, this is not the proper way to raise an issue in
4 a proceeding. Okay?

5 MR. OYSTER: Yes, Your Honor.

6 JUDGE KUHLMANN: Exhibit 8 is rejected.

7 (The document heretofore
8 marked Hispanic Broadcast
9 System Exhibit No. 8 for
10 identification was rejected
11 from evidence.)

12 JUDGE KUHLMANN: Are there any objections to
13 any of the other exhibits?

14 MR. SHOOK: No, Your Honor.

15 JUDGE KUHLMANN: Okay. Exhibits 1 through 6
16 are received.

17 (The documents heretofore
18 marked Hispanic Broadcast
19 System Exhibit Nos. 1 through
20 6 for identification were
21 received into evidence.)

22 JUDGE KUHLMANN: 7 and 8 are rejected.

23 Now, let me see if I have done everything I
24 want to do.

25 The intervenor, the person who asked to

1 intervene, is not here?

2 MR. SHOOK: Your Honor, I have some
3 information on that.

4 JUDGE KUHLMANN: Okay.

5 MR. SHOOK: I was in contact with attorneys
6 for the prospective intervenor yesterday. They
7 indicated they would not file --

8 JUDGE KUHLMANN: Oh, they did?

9 MR. SHOOK: -- a petition for leave to amend
10 with respect to the second MIMS amendment.

11 JUDGE KUHLMANN: Okay, because when we spoke
12 with them yesterday, they told us they did not know.

13 MR. SHOOK: I spoke with them late in the
14 day.

15 JUDGE KUHLMANN: Oh. Okay.

16 MR. SHOOK: It was probably 4:00 o'clock --

17 JUDGE KUHLMANN: Good.

18 MR. SHOOK: -- in the afternoon.

19 JUDGE KUHLMANN: So I do not have to worry
20 about them?

21 MR. SHOOK: No, Your Honor. You should not
22 be receiving another petition for leave to intervene
23 from them.

24 JUDGE KUHLMANN: Okay. Good enough.

25 Now, let us set some dates for proposed